City of Lafayette
Lafayette City Council
Open Space Committee Meeting

MINUTES

Lafayette Community Center – Manzanita Room **September 14, 2009**
500 St. Mary's Road, Lafayette, California **5:00 p.m.**

1. CALL TO ORDER

Mayor Tatzin called the Lafayette City Council and Open Space Committee workshop to order at 5:05 p.m.

2. ROLL CALL

Present: Mayor Tatzin, Vice Mayor Andersson, Councilmembers, Anduri, Federighi and Anderson

Absent: None

Staff: Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Greg Wolff, Senior Planner; Zoe Merideth, Intern; Joanne Robbins, City Clerk

Present: Open Space Committee: Phillip Chernin, Alan Horn, Elizabeth Johnson, Donn Walklet

Absent: Ann Cormack

3. PLEDGE OF ALLEGIANCE – led by Mayor Tatzin

4. ADOPTION OF AGENDA

ACTION: It was M/S/C (Anderson/Federighi) to adopt the agenda. Vote: 5-0-0(Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

5. PUBLIC COMMENT - None

6. PRESENTATION

Open Space Committee Workshop
Presentations by State Coastal Conservance, East Bay Regional Park
Muir Heritage Land Trust:

Phil Chernin introduced the Open Space Committee and the work it is doing to the City Council. Mr. Chernin described the criteria that have been developed and where the committee is going from here.

Michele Jesperson, Project Manager, San Francisco Bay Program, State Costal Conservancy introduced the State Coastal Conservancy. The Conservancy is a non-regulatory State agency with a seven member governing board. Within the State Conservancy, the Bay Area Conservancy covers all areas of the nine county Bay Area. Its goal is to provide public access to coastal areas as well as to protect, enhance, and restore the Bay Area's habitats.

The Conservancy has a number of goals. The Conservancy wants to improve public access and improve regional trails and recreation facilities. These goals are not limited to coastal areas and the goals are also aimed at urban areas as well.

Funding for the Conservancy comes mainly from bonds. The bonds providing funding right now are propositions 40, 50, and 84. Each year the Conservancy receives an annual appropriation from the bonds. Currently, however, there is no funding available for new projects. There may not be any new funding until 2011.

A detailed set of criteria aid the Conservancy in choosing projects. Projects must promote conservancy, be consistent with funding sources, be regionally significant, have public support, be in a suitable location, and have greater than local interest, address implication or plans for sea level rise.

Carol Federighi asked if this last criterion affected inland areas as well. Michele Jesperson answered that the criterion applied to inland areas, but it was likely that these areas would not need to be concerned with this specifically.

There are also additional criteria used. A project should try to resolve more than one issue, leverage funding sources, be innovative, reduces greenhouse gases and climate change. Any projects must have a willing seller.

The grant application process was described. The Conservancy encourages pre-application discussion to assess the likelihood of the project succeeding. This would include discussing the funding available and how consistent the project is with the Criteria. Applications are accepted throughout the year. In a grant application, the amount of funding requested and the matching funds must be included. A budget and timeline must also be incorporated. CEQA compliance also needs to be looked at. Many acquisition projects, however, may be CEQA exempt, and regardless of the situation the Conservancy will work with the client in order to comply. The proposed project must also be consistent with the applicant's General Plan and Guiding Plan.

The review process was also discussed. For a project within the Bay Area, the Bay Area Conservancy staff review the application, identify addition information that is needed, and make recommendations. Other experts may be consulted if necessary. The application is assigned a Project Manager. Documents pertaining to the application are reviewed. The application is presented to the Board and a final decision is made. Finally, a grant agreement is made. Generally the process takes about four months to complete once the application is submitted.

Examples of Contra Costa County projects were given. Galindo Creek Trail Gap Closure Project is a joint effort between the City of Concord and EBRPD. Fernandez Ranch Stream Restoration and Trail Construction Project were undertaken in connection with Muir Heritage Land Trust, and Chaparral Spring was acquired by EBRPD.

Vice Mayor Andersson asked about the Conservancy's goal of promoting open space in urban settings. The Lafayette Downtown Specific Plan calls for the downtown creeks to be opened up.

Vice Mayor Andersson asked if the Conservancy could help with this goal. Michele Jesperson said that the Conservancy would be interested in this and had participated in ABAG's focus program on smart growth and recreation. Vice Mayor Andersson also asked if funding was available for planning and construction. Michele Jesperson said that there could be funding for this.

Linus Eukel, Executive Director, Muir Heritage Land Trust explained MHLT's purpose and that Lafayette falls within the MHLT's dervice area. MHLT acquires and preserves open spacew, while also providing environmental education. MHLT has the public's trust, is able to communicate with landowners and work with them effectively, can evaluate the appropriate use of land, is a responsible steward, and can accept tax deductible gifts. MHLT works with other Land Trust organizations and does not stand alone. MHLT works within Contra Costa County and works west of I-680 and extends from Carquinez Strait to the southern tip of Moraga.

The limitations of a land trust are a land trust can acquire land or easements from willing sellers and accept donations. Aland trust cannot condemn land or pay in excess of the objective appraised value for land or easements.

How MHLT attains land is, the preferred method is a fee title acquisition or donation that also includes an endowment. Conservation easements are also used.

The need for open space protection is the State guidelines suggest that 3-7 acres of open space per 1000 residents are set aside. In Contra Costa County, there is no countywide funding source for purchase and protection of natural areas.

Linus Eukel also described the partnership MHLT has. MHLT has 3000 members, it also works with Foundations; Public agencies like the Sate Coastal Conservancy, EBRPD, and NOAA; and private industry.

The Fernandez Ranch project capital costs totaled $6,203,416 while stewardship totaled $1,000,000. The MHLT annual operating budget for the project is $500,000 which includes program services and supporting services.

The Keep it Wild Campaign works to acquire high priority properties, provided land stewardship, support environmental education, and build long range organizational support.

Vice Mayor Andersson asked about the corridors used in planning land acquisition. Linus Eukel said that they were intentionally kept vague to protect landowners. Vice Mayor Andersson then asked dif the corridors were constructed over time. Linus Eukel responded that it was an incremental, piecemeal process. In deciding what parcel to buy, the larger picture of how everything will fit together must also be looked at. Councilmember Carol Federighi asked about the availability of funding. Linus Eukel responded that in the past the State has been a good partner. There are other partners, however, and each program is unique in terms of which partners MHLT works with. Councilmember Federighi asked if it still looked good for other projects. Linus Eukel said it did.

Linus Eukel said that the timeline for a project is generally two years. It takes time to do studies, line up partners, and work with the landowners. After this initial process they are generally ready to go all in.

Councilmember Mike Anderson said that EBRPD has worked with MHLT and the Coastal Conservancy and that both groups do good work. He asked about the difference between conservation easements and fee title acquisitions since conservation easement and fee title acquisitions since conservation easements may be easier in the city's case. Linus Eukel responded that easements are an adequate tool, but owners do not usually request this route. Conservation easements are a good solution in some cases.

Phillip Chernin asked for an overview of Measure WW funding. Linus Eukel responded that he wanted to be careful not to speak from EBRPD. Lafayette will receive about $1.1 million from the Measure. EBRPD is especially interested in partnering on projects that help further their own plans for land acquisition. Phil Chernin asked how much money is provided by the measure each year. Councilmember Anderson responded that $80 million in bonds will be sold next week. This includes $30 million for acquisition projects and $30 million for cities. WW has a twenty year term.

Phillip Chernin asked about restoration costs, Fernandez Ranch's budget was about 50% for restoration, is this a typical percentage. Linus Eukel answered that there is not a typical percentage, it is generally lower than Fernandez Ranch. Some properties need only minimal restoration before it can be opened to the public. Phillip Chernin asked if properties were ever rejected because there would be too much restoration work. Linus Eukel said that he has not run into this. This also means that the land could be cheaper and that more of it could then be bought and preserved.

Councilmember Anderson asked about the funding of operational costs. Phillip Chernin explained that this is ranked as number three on the acquisition criteria. Councilmember Anduri followed up by asking for some background on where the Committee currently is. Phillip responded that they will be finished by December. The more challenging part – what the process should be – is being discussed now. Other cities have already developed processes and the Committee needs to look at those and make recommendations. Councilmember Anderson asked about the differences between open space, parks, and trails. Phillip Chernin said that some aspects are easy to define as open space, ridgelines, for example, are defined already. The key criterion for open space is if a parcel is vacant or underdeveloped. After that it becomes more nuanced. For example, the criterion "close to parks" – what does "close to" mean exactly?

Public Comments

GUY ATWOOD said that he has worked on open space and preservation issues since the 1970's and that he was also on the Lafayette Planning Commission. He suggests also looking at the scenic easements that the City has required when large parcels near hillsides are developed. Some landowners with scenic easements may be willing to sell these parts of their properties or give them to the City. There could also be tax benefits for the landowners. Brandt Andersson asked why the City would prefer to acquire the land rather than just leave the easement as it is. Guy Atwood responded that with a scenic easement the land cannot be protected properly and the City lacks control over it. The public is not able to use the land and the land just becomes something to look at. Carl Anduri said that this would be included in the open space mapping. He also added that it is a problem because the City does not really have the resources to monitor these scenic easements and that people may be encroaching upon them.

JOAN BRUZZONE asked for clarification on scenic easements. Can a person develop their property if it includes a scenic easement? She also asked what happens to the property taxes when the City buys a piece of property for open space. Don Tatzin responded that if a public agency owns a property then there would be no tax. Joan Bruzzone asked if this was also true if

a land trust owned the land. Linus Eukel responded that there are no taxes on the land. Joan Bruzzone expressed concern that the City was losing funding. Don Tatzin said that the City only receives seven cents of every dollar paid in property tax. Joan Bruzzone said that every penny still counts. She also asked about parcel taxes. Linus Eukel said that the assessed values of the properties are minimal in terms of the revenue streams that Joan Bruzzone was talking about. Once land is acquired there are no parcel taxes on it. Joan Bruzzone again expressed concern over this. Don Tatzin said that if the City had any voter approved parcel taxes that this may be a problem, but it does no and will not in the near future.

Niroop Srivatsa responded to the earlier question about conservation and scenic easements. They mean that the portion of the property with the easement cannot be developed. These are usually found along ridgeline or hillside properties. The owner is still allowed to develop part of the property, however. Occasionally, a landowner will ask for an exception to be granted. Don Tatzin asked when the City uses easements. Niroop Srivatsa responded that they are used if a property is within the Hillside Overlay District and the owner is trying to subdivide it. It can also be used along riparian corridors. Don Tatzin asked if they are part of the Conditions for Approval. Niroop Srivatsa responded that they are. The developer has to have initiated the development proposal and approved to develop some part of the land.

Phillip Chernin thanks everyone for coming and the Committee for the work that they are doing.

7. ADJOURNMENT

The City Council adjourned the meeting at 6:25 p.m.

APPROVED:

_____
Don Tatzin, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk

City of Lafayette
Lafayette City Council Meeting
Redevelopment Agency Meeting

MINUTES

Lafayette Community Park – Sequoia Room **September 14, 2009**
480 St. Mary's Road, Lafayette, California **6:30 p.m.**

1. CALL TO ORDER

Mayor Tatzin called the City Council meeting to order at 6:30 p.m.

2. ROLL CALL

Present: Mayor Tatzin; Vice Mayor Andersson and Councilmembers Anderson, Anduri and Federighi

Absent: None

Staff: Steven Falk, City Manager, Mala Subramanian, City Attorney

3. ADOPTION OF AGENDA

ACTION: It was M/S/C (Anderson/Federighi) to adopt the agenda. Vote: 5-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

4. PUBLIC COMMENT - None

5. CLOSED SESSION

A. **Conference with Real Property Negotiators (Gov. Code § 54956.8)**
Property: 950 Moraga Road, Lafayette, APN 234-010-011-0
Agency Negotiator: Steven Falk, City Manager
Negotiating Parties: David Twa, County Administrator
Under Negotiation: Price and Terms of Payment

B. **Conference with Legal Counsel - Existing Litigation (Gov. Code § 54956.9(a))**
R & R Maher Construction Company, Inc. v. HSR General Engineering Contractors, Inc., et al. Contra Costa Superior Court Case No. C 09-02256

6. ADJOURNMENT

The City Council adjourned the meeting at 7:00 p.m. to the Regular City Council meeting.

APPROVED:

ATTEST: _____
Don Tatzin, Mayor

_____
Joanne Robbins, City Clerk

City of Lafayette
Lafayette City Council
Planning Commission
Design Review Commission
Redevelopment Agency

MINUTES

Lafayette Community Center – Manzanita Room **September 14, 2009**
500 St. Mary's Road, Lafayette, California **7:00 p.m.**

1. CALL TO ORDER

Mayor Tatzin called the City Council meeting to order at 7:00 p.m.

2. ROLL CALL

Present: City Council: Mayor Tatzin; Councilmembers Anderson, Anduri and Federighi

Planning Commission: Chair Will Lovitt, Vice Chair Thomas Chastain, and Commissioners Rick Humann, Karen Maggio and Mark Mitchell

Design Review Commission: Vice Chair Andre Ptaszynski, and Commissioners Bob Cleaver and Bill Marquand

Absent: Vice Mayor Andersson

Staff: Steven Falk, City Manager; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Christine Sinnette, Senior Planner; Mark Robbins, Code Enforcement Officer; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

3. PLEDGE OF ALLEGIANCE

4. ADOPTION OF AGENDA

Mayor Tatzin noted a request by Mr. Coleman from EBMUD to move Item 13.c up to the agenda, and he suggested considering it after Public Comments.

ACTION: It was M/S/C (Federighi/Anderson) to adopt the agenda, as amended. Vote: 4-0-1 (Ayes: Tatzin, Anduri, Federighi, Anderson; Noes: None; Absent:Andersson).

5. REPORT FROM CLOSED SESSION

A. Conference with Real Property Negotiators (Gov. Code § 54956.8)
Property: 950 Moraga Road, Lafayette, APN 234-010-011-0
Agency Negotiator: Steven Falk, City Manager
Negotiating Parties: David Twa, County Administrator
Under Negotiation: Price and Terms of Payment

B. Conference with Legal Counsel - Existing Litigation (Gov. Code § 54956.9(a))
R & R Maher Construction Company, Inc. v. HSR General Engineering Contractors, Inc., et al. Contra Costa Superior Court Case No. C 09-02256

Mayor Tatzin reported the Council had met in Closed Session and provided direction to staff on both Items A and B.

6. PUBLIC COMMENT

ANN BURNS announced that the paving project on Camino Colorados was completed and she thanked the Council. She reminded the Council that there were still over 100 failed roads, asked that they be made a high priority, noted that 63% of registered voters voted to pay additional taxes to solve the problem, and she asked to see the Council and staff encourage Public Works and the City Engineer to work more closely together. After speaking with Public Works, she said Mr. Lefler visited her and assisted with problems, which she appreciated.

Mayor Tatzin recognized Ms. Burns' work in helping to get 63% vote, and he hoped for another opportunity to go to citizens to raise funds for remaining roads.

13C. E-mail from John Coleman, EBMUD Board of Directors, Ward 2 requesting council send a letter to EBMUD asking the Board to consider all options, and to not limit future choices to meet the demand for water in the years to come.
Recommendation: Discuss and direct staff.

John Coleman, EBMUD Board Member, asked the Council to send the letter to EBMUD's Board, asked to keep all options open and he said the EIR will come out in early October with a decision to be made soon thereafter. Each time an option is removed, the dynamics change and they know that by the year 2040 100 million gallons of water will be needed per day based on projected growth along the I-880 corridor. They cannot afford to limit their options, as they are looking at a five year window to negotiate with parties on either desalinization, increased use of recycling water, conjunctive use, putting water in the ground, bring the drinking reservoir water down and raising it to accommodate more storage. He said they are increasing conservation by another 39 million gallons per day in their 2040 plan; people are suggesting raising rates for tiers II and III which would be devastating for users. He hoped that the Council decides to sign onto the letter which will be added to the EIR.

Councilmember Anderson questioned and confirmed that the deadline for comments is at the close of this week. He supported keeping options open, has not yet read the study, and he trusted Mr. Coleman's characterization of the study. Councilmember Anduri similarly supported the request.

ACTION: It was M/S/C (Anderson/Anduri) to send a letter to EBMUD asking the Board to consider all options and not to limit future choices to meet the demand for water in the years to come. Vote: 4-0-1 (Ayes: Tatzin, Anduri, Federighi, Anderson; Noes: None; Absent: Andersson).

7. PRESENTATION - None

Convene Joint Session Design Review and Planning Commission

ACTION: It was M/S/C (Tatzin/Andersson) to convene the Joint Session with the Design Review and Planning Commission. Vote: 4-0-1 (Ayes: Tatzin, Anduri, Federighi, Anderson; Noes: None; Absent: Andersson).

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8. OLD BUSINESS

A. Lafayette Town Center Phase III: Study Session of an 82-unit residential condominium project submitted by Lafayette Residential Partners and KB Homes, Inc. on a 1.47 acre vacant parcel located behind 3590-3608 Mt. Diablo Blvd., APN 243-040-035

Recommendation: Provide direction to the applicant. No formal action will be taken by the City Council or Commissions.

Mayor Tatzin introduced the item, suggested that if the City Council believes it is appropriate for the project to proceed, it may want to highlight topics it thinks require additional work. He encouraged all Councilmembers and Commissioners to thoroughly discuss and provide comments on the item and then discussed and recommended protocols for the presentation.

Planning and Building Services Manager Niroop Srivatsa said this is the second meeting to consider and provide preliminary comments on a project that will involve the construction of 82 condominiums on 1.47 acres of land located behind Town Center retail. The retail center has such stores as Pizza Antica and Baja Fresh. The pre-application meeting is important to both the applicant and to the City. The settlement and development agreements that govern the project require that the Council, Planning Commission and Design Review Commission provide preliminary comments regarding the potential approval or disapproval of the project. They also dictate that future submittal requirements shall be limited to matters legally required for project consideration and directly responsive to the comments from Councilmembers and Commissioners made at this joint meeting.

Also, comments made at both meetings will provide an indication for the applicant of the city's support of the project and will determine whether or not the applicant will choose to move forward with the filing of a formal application. Therefore, staff encourages frank comments. If there are specific aspects of non-support unless they are revised, she asked that they be raised. If fundamental concerns cannot be mitigated through project revisions, she asked that they be discussed and reasons why those concerns are present. Conversely, she asked everybody to explain their reasons for support of the project. The comments made at this meeting and the last meeting will constitute the City's feedback to the applicant.

Ms. Srivatsa said staff supports the construction of a high density, multi-family project at this location. The site is adjacent to BART, within walking distance to stores, parks and services. It is, in staff's opinion, an ideal site for high density housing. It also provides an improved pedestrian linkage to BART and affordable housing. Staff has raised a few issues that need to be addressed before staff can bring its full support to the project, and these issues include the treatment of all four facades, parking and circulation issues, and the proposed quasi-public space. All issues have been outlined in the staff report.

Since the eastern, northern and western elevations were not provided, staff was unable to comment on the merits of those facades, and the applicant has stated that the southern elevation serves as a prototype. If this is the case, staff would like to underscore that the treatment of all facades must be revised to the City's satisfaction in order for the project to gain approval.

Secondly, many of the floor plans were not submitted and staff therefore cannot comment on parking and circulation issues. In the packet, there is a memo from the City's engineer and traffic consultant. The issues highlighted in the letter and others must be met to the satisfaction of City staff and the City's traffic consultant during the application process and any reductions in the number of parking spaces that may result as part of this review could potentially result in a reduction of the number of units.

Thirdly and the most important issue is the quasi-public space that is called for in the settlement agreement. Staff does not believe the applicant has addressed the City's comments regarding the use and treatment of the colonnade and the plaza. With the relocation of the lobby eastward which was a City requirement at the last meeting, the arcade will be long; at least 120 feet in length, and will occupy nearly 2/3 of the building. The arcade and the plaza are replacements to five live/work units and a full service restaurant with outdoor dining in the previous iteration. To replace these uses, the settlement agreement calls for an acceptable open space or quasi-public interior space that enlivens the southern edge of the development and that meets the City's aesthetic requirements. Staff does not believe that the arcade and the plaza meet this test. If the arcade and the plaza were to be truly public in nature, they need to provide the amenities that would attract shoppers and residents in the nearby apartment buildings. If the project is approved, there will be over 200 multi-family units within walking distance to the subject property, and including the subject property. She said this area needs to become a true public space that enlivens the project's southern edge and provides a public benefit.

Mayor Tatzin disclosed that he met at the applicant's request with them about eleven days ago to discuss what he assumes will be similar to the comments of today, and he anticipates other members of the Council and Commissions have met with them, as well. He asked others for their disclosures since the May meeting.

Councilmember Federighi disclosed that she and Councilmember Anderson were part of a subcommittee that has been meeting for some time with the applicant. They met with them also about a week and a half ago. Councilmember Anderson said they also met with them one month prior to that.

Commissioner Maggio disclosed that she met with the applicant for two separate conversations to discuss potential improvements to the project at their request. Vice Chair Tom Chastain disclosed similar meetings, as well.

Commissioner Chastain asked to elaborate on the public uses that staff has to enliven the edge because he said it seems to be a problem as to what can go in. Ms. Srivatsa said suggestions that staff have in the staff report include an area where children, parents and grandparents can gather in the evening. Staff suggested a water feature, a spray ground, some interactive art, and successful examples can be found at urban plazas and even pocket-size plazas that work well. Staff believes it would be appropriate to have this at the location.

Councilmember Anduri questioned if there was anything that shows the southern façade other than what is presented, and Ms. Srivatsa said no.

Applicant Presentation:

RAY PANEK, Senior Vice President for Forward Planning, KB Homes South Bay, said staff summarized the process and said they have been involved with the current land owner since

2005 and with the City for a year on the current proposal. At their request, they met with DRC members Hertel and Lee on two occasions between the May 2009 meeting and tonight. He appreciates the candidness and openness about the project and how to make it better and ideas for what the City might be looking for. He hopes to show very positive changes to the project and said they are at a point where they need to be looking for an indication of whether to move forward or not.

Mr. Panek said the project team consists of himself, Jeffrey Heller from Heller Manus and Bill Smith from Smith and Smith Landscape Architect. He said he would present a tour of the project site, said they incorporated previous photomontages to provide ideas of what is and is not visible, and how this relates to their comments. He will review commitments made at the "May '09 meeting" so it is clear for the record, and also planned revisions for the landscape and architecture.

He said another issue that came up in the previous meeting and one that they held discussions with a couple of times with Planning Commissioners on a Build It Green program for the project. They went through their rating list and have comments on it, as well as benefits of the project and questions and answers. He said they retain the general footprint, building elevations, general site plan and plaza dimensions from the 2005 plans, they have worked with staff, and in the packet is a spreadsheet that outlines the proposals as they evolved from 2005 to May and to the current proposal, which is remarkably similar to the 2005 proposal.

Regarding the economic viability of the project, they have made commitments to bring the density down from what was originally proposed as an 89 unit project to an 82 unit project. Regarding the garage, the garage area has not changed; they did not have the budget to do a full redesign of the parking garage but are confident they can meet the 143 spaces required. They have lost 7 units from the previous proposal and they understand the need to work with the City's engineer and traffic consultant to finalize the design.

Mr. Panek then presented a view looking at the site from the BART station, elements of the dark roof proposed, one of the towers in the distance which will be eliminated, the western elevation by the bank site and then onto Mt. Diablo Boulevard, street tree plantings and medians. In getting closer to the site and into commercial, he displayed pictures of the apartment project, the towers proposed which are being recommended to be eliminated, Dewing Avenue, and the 2005 proposal with a sketch overlaid of the current project, where they looked at moving the main lobby so that it creates an intersection with a terminus to the vista. He said they widened and deepened the cut out of the building, the entrance to the garage is off to the site, the landing area for the lobby has been increased by using another parking space, and he presented landscaping, trees, alleyways, and areas by Baja Fresh. From specific angles the site will be seen, and he presented a view from in front of the apartments from the 2005 proposal, but said if the tower is taken away, it has a significant impact on what is seen. There are minor and few points where the building can be seen. They looked at the Dewing Avenue intersection and putting both the garage entry and creating a vehicular intersection there which can work, but then there is a gaping hole in the building that ends in the terminus.

Mr. Panek said for the record they are moving out the drip line of the oak tree. On the northeast corner of the building, there is a question about the stepping down of the building on the back side. They propose eliminating the 3-bedroom units on the top floor and those are provided in alternative elevations, which would provide a greater setback from the BART walkway and additional landscaping. Regarding meeting the parking requirement as stated in the settlement agreement and providing the sculpture, arcade and plaza at the southern edge to enliven the

frontage, there is a question of building materials and final design. He said everybody they spoke with offline on the project indicated that the kind of need to go through the iterative process of specific design details is paramount in making the project successful in terms of time and money they have spent, and they found it to be fairly productive in working with Commissioners Lee and Hertel on the architecture and having conversations with the Planning Commissioners in trying to understand issues. He said they can talk further about arcade issues, but generally, they looked at providing "10 pounds of product in a 5 pound sack" and they had too much going on. The design folks and Planning Commissioners felt the same way, and in one of the meetings, there was a question about what the unifying theme was. From a landscape perspective, it is organizing the circulation around the site but frankly, it is not the best for pedestrians, vehicles, or for planting pockets. Their intention is to create a nice setting and a walkway for the creek and building. They do not feel any of this is a final answer to the design questions, but at this stage in the process and where they are with the settlement agreement, they think they have a good head start and a fair amount to talk about.

Mr. Panek said in the packet are the summary plan revisions for the record. They are moving the buildings back and away from the drip line, they had a stack of 5 studio units that have been eliminated from the project, there were 2, 3-bedroom units on the 5th floor that have been removed, they are still comfortable with the offset lobby entry given the amount of traffic coming to the project, they moved the lobby over to align with Dewing, creating a crossing area and enlarging the size of the lobby and drop off area, and connecting with the circulation through the colonnade. Their other problem with the site that they feel needs to be worked out together is the back side of the commercial space; they unfortunately do not have an entry and it is not well-treated. They can get a band of landscaping in there, force pedestrians to use the arcade, and they also have niches where they can start getting site furnishings, create nice areas to display art and put some landscaping back in, coordinate street tree planting and create a better setting along that side of the parking lot. He felt there are many services within ¼ mile of the project that they need to address and make it easy for people to circulate back and forth. Finally, he said the lobby works better for them and the building architecture and it moves the elevators back.

Regarding redesigning some of the interior of the building, they are creating lobbies on all floors which create additional planes on the edges of the building which was voiced as a concern previously. He said they can work with the DRC to articulate that within the context of the new architecture being proposed. They are removing the north and south towers, they are proposing to remove the "snail" landscaping feature, and he presented the northeast corner showing the 2, 3-bedroom units removed and the proposed towers which are eliminated.

He presented the maximum elevation at around 393 which is the highest point on the building, elevations at 376.3, a point on the proposed buildings at 361.5, the specialized unit with the dormers which is at 370.3, and a point at 378.2. They heard comments regarding the southern elevation from the previous meeting and that is where their focus went into trying to organize the landscaping and irrigation.

Mr. Panek concluded his presentation and introduced Bill Smith, Smith and Smith Landscaping.

BILL SMITH, Smith and Smith Landscaping, said his organization will focus on what was discussed at the last meeting, modifications made to the open space and landscape plan based upon comments, and some of the design considerations they have been working on with the architect and developer. He said they will present slides of the revisions, the open space and circulation plans and the rationale behind it, will review the previous landscape plan presented in May, the revision, and look at some of the cross-sections.

He said landscape revisions are more modifications; the site has not changed that much nor the building other than the footprint and mass being broken down and with more articulation. One of the major issues is that pedestrian-friendly, enlivened spaces create opportunities for excitement and for people to enjoy the sunlight and beauty of the creek as well as along the pedestrian walkway to the BART and away from BART. He said for 20 seconds, people walk down through the site and they are back in the parking lot again. One of the concepts has always been to focus on the creek and the pedestrian connectivity along the BART trail. The other issue is the setback from the parking lot, which is there and will not change. Therefore, some intermediate hierarchical study must be found which will involve landscape architecture, art and architecture, spatial design, aesthetics which will involve site furnishings and placements, and an amenity or two the City would like them to work with.

Mr. Smith said there is cross-slope across the site and in moving to the south, the path does work through that, and the gentle movement down the path will continue. There is opportunity that has been addressed where they have created a plaza of about 50x75 feet wide. Part of it is undercover and part is out in the open space. It is connected to the south boundary of where there is an existing plaza now. The elongated sequential plaza also has a different personality as it moves into the colonnade both under the building as well as it sees from the parking lot, and which is very strong for those residents of the building as well as those who walk to existing crosswalks on the main street. Some of the modifications are also found in the revisions they went through of reorganizing and ensuring they tested the organization of pedestrian circulation and how landscape open space with architecture and those elements of the existing site are going to be preserved. They did not change the theme of the oak woodland, but rather added more to it; they brought more of it over to the other side closer to the building.

Instead of having pedestrian pavement that was shown last time, they created a perimeter of landscape zone against the parking. Where they had a setback of the building, they added more landscaping, particularly at the northeast corner of the building. They increased the size of the outdoor landing at the main lobby which was important because it is a major access back to the building as it is seen from Mt. Diablo Boulevard. He said the colonnade is still an opportunity. They have not taken anything away, and are adding. They also tested different ways to clothe that idea and now the ethos of it can be borne and brought out in working with the arts, site furnishings, water, history, tile, and other ways.

Lastly, they simplified the pedestrian public use at the lower plaza. They also think the size of the plaza in that area is also a landing area as one comes down the hill. They created a more generous plaza area as shown in the last concept.

The May circulation plan and open space plan talked about community open spaces, creek and overlook by the private terrace. They ended up at the south overlook where it was quite constricted. There was no major entrance off of Dewing where it really featured the pedestrian entrance and how the building met the ground on the cross access. The revised circulation shows an increase of the north overlook of the landscaped area there, the nautilus, the garden, and more interesting as seen at the southern crossing, there is an expanded opportunity to be able to reach back at the so-called colonnade art walk, and then the major entrance back to the building which is the major address of the building off of the parking lot.

The previous landscape plan shows the nautilus, cross sections looking down to the south overlook, the arcade niches are filled and pedestrian pavement was right at the edge with no landscaping. Generally, the concept back to the building entry was starting to be developed. For

the new concept, there is an increased setback of the building mass. There is a gentler grass woodland type of environment where the nautilus was. As one moves down to the south by the plaza, they have the colonnade but this time, the building has a base of landscape with a long concept, with a T and also a crossing back into the plaza.

Mr. Smith summarized by presenting the previous and current cross-sections. The colonnade has plant material at the parking edge and the colonnade under cover backs to the entrance to the building which is clearer and more organized. The southern section in the middle is much enlarged over what was before in terms of opportunities of what could happen to enliven that gathering place.

Councilmember Federighi noted Mr. Smith's statement that there is a much enlarged plaza area, and she did not understand why that would not be reflected in the square footage on page 2 of the staff report. She said the staff report indicates that in the 2005 plan the square footage area of the landscaped courtyard is 4,668 square feet. The May 2009 plan lists it at 3,914 square feet and the same figure is used for this September 2009 plan. Mayor Tatzin questioned and confirmed that this was a reference to the interior courtyard for residents only and not the public.

Councilmember Federighi questioned how the size of the public courtyard compares to the 2005 plan. Mr. Smith said he could not answer the question because he did not have the 2005 plan.

JEFFREY HELLER, Heller Manus, said they went through a dialogue with DRC and amongst themselves, looked at ways to refine the building design to more meet the criteria discussed. This is an idea sketch about how they would do that, and then the sketch would lead to further meetings and dialogue with staff and sessions with DRC to come up with a precise and refined approach. He said they eliminated the tower in the corner, but in addition, they have not replaced any of the balcony structures except for some modest ones which create an increase in the area of the plaza at this point, which is adjacent to the path going up towards BART. They have taken out from underneath the building a lot of the plaza area so that while it still passes under a projected portion of the building, there will be a lot more of it in terms of square footage which is open to the sky. He estimated the piece that opens to the sky at being about 14x12 feet in dimension.

Additionally, in relationship to parking back to the landscaping, they relocated the entry and the design composition of the base is one of varying heights and elements that help articulate the bays and further articulate the façade. But it also creates opportunities in planned setback of about 6 feet at each of the spaces which is open to the sky area where some planting and landscape could occur, so that the arcade that runs behind would also have seating opportunities. He said it will be in the sun quite a bit, and the combination of trees for shade and the access for sun, benches and planting would make for a place for people who go and buy food nearby or who want to sit and relax can do it.

MR. HELLER said they designed Hayward City Hall and an enclosed arcade goes from the lobby down towards BART, which is a comparable length to this or longer. There is some seating and they rotate art through there, and he thinks having an outdoor sculpture on display along that arcade, plus the benches, seating and landscaping which is emphasized by the bay rhythms, will create a very nice environment; they just need to refine that further.

Mr. Heller said the idea of the stone base goes back to the use of highly textured materials. The other thing they did in making the entry central was they re-arranged the interior of the building where the elevators and lobbies are and created a landscape terrace on top of that. This element

is over 36 feet deep which is significant when incorporating the landscape elements and some trellising. It will also help emphasize the axial relationship along Dewing, and he felt everybody feels the Dewing relationship is quite strong.

He said there was also discussion about the attic story to have more detail, articulation and emphasis so that the various elements would have more depth, the windows throughout would be broken down in scale within that to give a visual interest at the upper part of the building, and one which reinforces a base, middle and a top. He said nothing can be seen except for the glimpse from Dewing or if someone is on the street behind the retail, it nicely emphasizes the pedestrian connection to get back to the building.

Another key decision they made was that there was a lot of feeling about the verticality of the building and they believe some of it had to do with the peaked roof element which emphasized the height. The whole composition is one of hip roofs that settle it down; it has the visual richness of the forward and the back and with the drop of this element with the dormers, it really works well to harmonize and relate all the pieces and scales and provides a lodge-like quality. What also helps is the use of belt courses, echoing the line of the lower roof-line which relates to other parts of the building and there is a constant play with the façade of the building as one moves around.

He said the removal of the towers creates the quiet aspect as one moves around the building, and it makes for a calmer residential approach. He felt they were now on a path to making the building visually rich and a character people can relate to warmly as they walk by it.

Mr. Heller said their firm is very far down the road in their commitment; they did the first LEED Platinum neighborhood design program and several gold-rated buildings in the LEED system, and are working closely with the applicant on this element.

Mr. Panek presented the plaza area to Councilmember Federighi, stated the old plaza area co-opted parking with 10 spaces, there was a restaurant with outdoor seating calculated in, and their feeling is that the actual terminus plaza is now bigger in their proposal than it was in the previous plan. They are not taking any parking in the area and are leaving it as it exists today. He said another discussion they had is green building and he noted that KB Homes will be opening up a green building certified project in South San Jose. In February, they will open one in Redwood Shores, and in March they will open one in Dublin. They are fully involved in the green-point rating and green building, and he said that the project, by its very nature being infill and high density in close proximity to a BART, gets points simply by doing the right thing. He said just about every service or need is within one-quarter mile walk from the site and residents that live there do not have a huge need for a car.

He said the project is 15% energy efficient above Title 24, every home built by KB Homes is an energy star home, they will conduct their own acoustical study but in every project, SPC-rated dual pane windows exceed Title 24 requirements, and shades will be installed on the southern elevations to help with sun intrusion. They use Moen low-flow fixtures, efficient appliances and dishwashers; the landscaping will be drought-tolerant and will focus on native materials with appropriate irrigation systems. The Connex Tech system discussed at the last meeting is a steel framed system. It is built in a controlled environment and a minimum of 70% of the steel used in the system will be recycled. Also, the building can be taken apart and reuse the steel by unbolting it. He said low VOC paints will be used; recycled carpet, low VOC flooring, and using concrete floors will significantly control noise.

Regarding benefits, they hope the City has seen the evolution of the project and the project architecture which will result in a very attractive project and contribute to Lafayette. They will attract young professionals that want to live there, be close to transit, move down residents who are affluent, and there is also an affordable component to the project. They will make efficient use of the existing infrastructure, as they are not expanding infrastructure, not creating growth-inducing things, they feel they will reduce commuter traffic, the focus is to use BART, and they will enhance the creek experience and the entire circulation around the site making it better for people in and out of cars. Also, there are commercial aspects across the street and in the apartment, and the terminus of their walkways is good for furnishings, people to gather, and they will continue to work with the DRC on these elements. Also, the project provides local economic stimulus by bringing people downtown and closer to the downtown.

Mr. Panek said he can make the proposal to the Land Committee in Southern California that they are moving through a process with the City. He said it is not an inexpensive proposition to make a full and final application and cited their budget which is over a half million dollars which they would need to seek from their Land Committee to proceed further. They will not be making that recommendation to continue with this funding unless there is a very positive recommendation from the Council, DRC and PC, given the settlement agreement and the process envisioned. They feel they have a very attractive project, acknowledged that it was useful to sit down and hash out and discuss ideas, and they would continue to endorse this process.

Mayor Tatzin asked for questions of the Commissions.

Planning Commission Chair Will Lovitt questioned the height of the eastern side of the building on the approved office project. Ms. Srivatsa said the maximum height of the building is 35 feet on the approved office building, measured to the mid-point of the sloping roof. She said she was not sure what the eastern side was, but it would not be higher than 35 feet.

Commissioner Mitchell referred to the creek area and said it looks like it is 14,000 square feet in the staff report. He noted that the City has been working on a Downtown Strategic Plan which is trying to incorporate the use of the creek and more beneficial interaction between the creek, pedestrians and public space. He said in one cross section, the western bank of the creek is very steep but the eastern bank is more gradually sloped. He questioned whether or not the applicant has done anything to take advantage of the 14,000 square feet of open space. He asked if they spoke with the Creeks Committee or looked at flood levels. He also said there is a nice fence that runs along the BART path and he questioned if the additional space could be used better.

IVAN GLOVER said he worked on development of the creek in the previous iterations of the project. One of the issues is the Department of Fish and Game. He said they tried to do many things but Fish and Game is a strong body. They feel powerless to do any work in the creek at all because it is Fish and Game's policy on the creek that it stays in its natural state. If the City is able to convince Fish and Game to do what they cannot do, then it opens up other possibilities.

Commissioner Mitchell questioned and confirmed with Mr. Glover that they have not had any interactions with the Downtown Specific Plan representatives nor actions they are taking in the area on the issue.

Commissioner Ptaszynski questioned the gallery space ceiling height and the side to side depth, as it varies in the more covered and uncovered areas, and he asked if any pedestrian penetration of the green planting strip between the parking and the gallery was anticipated. Mr. Heller said currently from the plaza area to the lobby, they have created a more permanent area because it is

a continuous row of car parking. At the plaza area and at the Dewing drop-off where the sidewalk is widened, they are all permeable. They did not do it in the area where there are a continuous line of cars; however, they could do it, but it is not a natural access for people coming across. People who sit in the various areas have more of a sense of separation from the automobile, but it is not hard and fast. The arcade itself is 8 feet wide and the dimension from the face of the building to the property line which is at the back edge of the planting is another roughly 6 feet, for a total of about 14 feet. They can have continuous bench and plantings along the length of the parts that are in the outdoor open to air part. The ceiling height is 10 feet clear.

Commissioner Marquand asked Mr. Heller to characterize the change in massing off of the building from May to present, specifically the ridgeline all the way around the building. Mr. Heller said the main change is the tower elements being removed. He thinks the height and strategy have not changed much. The main change is the moving of the space as well as the depth of the space; therefore, there is now more variety in the element and it goes back further and deeper. It steps more now along the west façade. They already removed residential units and pushed it back and the tower got removed.

Commissioner Marquand confirmed with the applicant that, in terms of the height of the building and the number of stories, things are pretty much the same except for the towers. Mr. Heller read off the height differentials. Mr. Smith said another major change is that the elevator has been pushed back significantly from the south, and the other section shows this as moving north.

Mr. Heller agreed and said this has created a landscape deck of 36’8” deep. He presented the existing ridgeline of the existing apartments and they are 5’3” below that. He presented elements 20 feet, 15 feet and 23 feet below the line and as the building moves east, every part of it stays below the existing apartment building.

Commissioner Humann said staff has concerns about the arcade and meeting the needs of the public, and he asked if Mr. Heller sees the current application as being able to evolve into satisfying the needs of what staff has discussed, or he questioned whether or not the application was flexible in that regard. Mr. Heller said from his experience in doing an arcade like this in Hayward, he believes it will be a very pleasant place. If seating, shade, dimension and art are provided, it will become a very quiet and pleasant space. He said once they get a “thumbs up” they can sit down and work with the planners and design review and get further into it. He said they want to indicate the direction they want to go in after listening carefully.

Mr. Smith said they would rather have the landscape setback at the parking impenetrable because it went back to the concept of organizing the circulation around the building and area. They would like the pedestrians to move in through the arcade or colonnade space and he also feels that the opportunity in getting landscaping to move up and trees will start to help make this better. The southern exposure is a very comfortable space to walk through and then head downtown. Regarding the issue on the design details and placement and inclusion of art, they made it very clear that there will be a fairly significant art and public places fee that is paid here, and they would love to incorporate it as part of the project. They also recognize, and in all of their off-site conversations with people, that the location and accomplishment of site furnishings is yet to be determined. He said regarding spray grounds, they have done spray grounds and he would probably want more discussion on something as specific as this as to whether this is the best spot for it, or whether there is a spot where they can carve it out somewhere else, perhaps in the plaza area or further back into the site. There may be technical issues of safety and clearances they must accommodate for, but having said this, they believe within the context of the 2005 plan and

the settlement agreement, they can more than adequately organize the space and provide public amenities to make it a nice project.

Councilmember Anduri referred to the landscape plan and said it seems to be showing almost a uniform edge of paving. He questioned what the 8 feet+6 feet at the bottom was, and questioned if part of it was covered and part of it not. Mr. Smith said there is 14 feet from the back edge of the planting to the face of the building and there is 8 feet from the inside edge of that pilaster to the edge of the building. Mr. Heller referred to the plan picture and said the plan is not showing any benches or landscaping and this is why it looks like a straight shot. He described the building moving in and out which creates a series of bays under the projections as it goes along and open pockets to the sky. So, by designing in the planting and the benches, real seating areas are created that have sort of a discreet identity, separated or emphasized by plantings.

Mayor Tatzin referred to the southern edge of the building, east of the lobby, moving above the ground floor where the arcade is, and he questioned how much the building go in and out in terms of setback. Mr. Heller said there are a variety of dimensions; it is about 14 feet at the corner of the building coming out which creates a notch where the plaza element would be. The typical bay dimensions are 3 foot setback and below that the base elements are 5'8". He described another roof element where it steps back another 2 feet.

Mayor Tatzin referred to the peak of the proposed roof on the southern side, and said if you extend it over with the top of the roof at the south side of the existing apartment building, he asked how the two compared. Mr. Heller said it is 15 feet below. Mayor Tatzin confirmed that it is 15 feet below the building on the north side, and Mr. Heller said it is roughly the same, at about a foot or two at the low part. Mr. Panek pointed to the elevation and said the lowest point is 15 feet, another point is 6 feet lower, and another point is 2 feet higher.

Mayor Tatzin referred to the photo montage and he asked how the top of the roof on the existing building on the south compares with the top of the roof on the south face of the proposed building, and Mr. Panek said it is 2 feet lower.

Public Comments:

MARIE PARTI said she disagrees with the entire concept of the building, stating that the project is much too big for Lafayette. She agrees with high density housing close to BART but questioned the need for a 5-story, 67 foot building. She said if the Council ran as a homeowner candidate today they would not get elected, and she hoped the Council reconsiders the size of the building.

Mayor Tatzin questioned Ms. Parti's opinion of the existing apartments on the other side of the creek. Ms. Parti said she has never been crazy about them, but thinks that a 5-story building at such high density is not village atmosphere and is inappropriate.

ELIOT HUDSON said the project is just too big for Lafayette; a lot of time has been spent on the Downtown Specific Plan and what the community wants and heard is small town and low scale. He said the project can be articulated as ever, but it will never be low scale, and it is misleading to say it will not be seen from any place. He then described the several places where it would be seen, and stated the building is 20 feet higher than what has been discussed for any buildings in the downtown. There are many people in the community are only now waking up as to larger buildings in the community and he said they are not wanted.

GUY ATWOOD thinks the applicant and staff have done a fantastic job of getting the Council and Commissions to focus on the trees, but what is missing is the forest, which is the fact that the project is far too big, tall, massive, bulky and dense. He said the project is 50% higher than what the General Plan allows for the area, which he said is inconceivable. He asked to focus on height, bulk, mass and density before architecture and colonnades and articulation are discussed. He also said the applicant wants to take credit for the open space, but it was for all three projects; along the street, the apartments and the third project, and he said this project gets one third of it. He said Eden Housing will be a very tall project at 46 feet, and this project is 50% higher than the tallest building in the history of Lafayette. The density increase is 60%, and if you take out the creek it is almost 100%. The General Plan and Specific Plan already took into account that there is a BART station there, he noted that the apartments are only 45 feet tall, and the Library is only 25 feet versus the project at 67 feet. He asked to take a story off the building, make the project more agreeable with the General Plan and Specific Plan, and asked to put up story poles.

Councilmember Anderson questioned if Mr. Atwood was suggesting that if story poles were put up for the plan and it turns out that it really cannot be seen, would he be okay with it or not. Mr. Atwood said he believes the project has more problems other than height and he thinks it is simply inconceivable that it will not be seen, and he wants to see what it looks like with story poles.

BYRNE MATHISEN questioned the allotted parking space for 82 units with 143 parking spaces and questioned how many bedrooms were included in the 82 units. Mayor Tatzin said the City has not seen the final floor plan configurations, so one of the things staff said in the beginning of the meeting was that they are not confident that parking is adequate because they have not seen the layout of the garage or studied the number of bedrooms, so it would still be an open issue. However, the applicant said that they thought that because a number of units are being eliminated from the prior plan, there would be adequate parking given the City's requirements.

Councilmember Federighi said the applicant is required to have one space for each of the one bedroom units, and a maximum of two spaces for a unit, so therefore, two- and three-bedroom units would require two spaces, and 143 spaces fulfills what they are proposing if they can fit them in.

MS. MATHISEN questioned how the highest roof peak compares to the BART platform behind the building. Mr. Heller displayed slide 6 showing the BART platform and Ms. Mathisen confirmed that the highest roof peak exceeds the platform; by adding one big building, there will be more of a walled effect from what can be seen through to the hills beyond. She said the community still considers itself a small town, the project is big, and she questioned what would prevent the City from approving other five story structures.

Councilmember Anduri said he thought there was a diagram that showed the existing project and the roof line of this project being up to a line which crosses the diagram. He said the diagram does not square up at all with what is on the screen. The applicant displayed the diagram, and Councilmember Anduri said it shows the existing roofline clearly visible on the composite, it shows a line going across and the proposed roofline 5.5 feet below the line. The applicant then displayed the diagram which was put up when Ms. Mathisen was speaking. The applicant said the proposed building would be hidden by vegetation. Councilmember Anduri noted it was higher than the freeway, and the applicant said it was higher than the freeway but below the platform. Councilmember Anduri confirmed with the applicant that the top of the building would not be seen from the platform. The applicant stated that what the photo montage depicted what was real from that point on the BART platform.

Councilmember Anduri questioned the density of the other residential project, and Ms. Srivatsa said staff looked at all three components of the Town Center project which is slightly over 4 acres. She said she would need to refer to the previous staff report.

Councilmember Anduri noted that Mr. Heller met with Commissioner Hertel and Lee and in the last meeting, Commissioner Hertel had concerns about the property crowding the borders and not allowing much space, which has been the concern expressed by speakers. While it has been pushed back, one can feel they are in the shadow of the building when walking along the sidewalk. He questioned if Commissioner Hertel has been satisfied in terms of the feeling of the building and it crowding the borders of the property.

MR. PANEK said their conversations focused on the articulation of the front façade. They focused on the southeast corner because at that time they were trying to fit in a gathering space with a water feature, and Commissioner Hertel was concerned that it was not the appropriate space for it. So, it went toward eliminating the whole tower structure and balcony structures to open that up and create the circulation. He also liked this part of the building and both Commissioners were adamant about the articulation in the window pattern, in lightening the top and this is why they went to the specific roof structure where the windows are set back. They wanted to see a purposeful design of the colonnade, but he felt this could be worked through and they were comfortable with our ability to follow-through with the details of the western and other elevations of the building.

Ms. Srivatsa replied to Councilmember Anduri's previous question, stating the entire Town Center PUD development is 4.84 acres in area including the retail portion. When adding both phases I and II, the resulting density is 32 dwelling units to the acre. The General Plan density is 35 units to the acre. Councilmember Anduri questioned the area just for the residential units. Mr. Heller said excluding the developable portion, it is about 1.47 acres divided by 80 units. Ms. Srivatsa said it is 56 dwelling units to the acre in looking at Phase III and 55 dwelling units to the acre combining 1.4 acres and 1.47 acres for Phases II and III, and a total of 157 units.

Councilmember Anduri confirmed that the density for Phase II of the existing apartment building was 53 units to the acre.

Mayor Tatzin suggested hearing Commission, and then Council, comments.

Commission Comments:

Commissioner Cleaver thanked the Council and the applicant for their work on the project. He said shifting gears from massing and bulk, he wanted to identify some of the pluses on the plan. He really likes the fact that the current landscape study extends the feeling of the creek to the building, and it feels less like a development on the east side of the building of a development adjacent to a large building. He said it feels like the creek is coming to the building and that the path is meandering through that development. He thinks the building articulation and the plan views are not indicating what the intent is, and it was explained that this needs further work. He also likes the fact that the centering of the lobby is on Dewing and that there will be a more organized presence to the entry of the building.

Commissioner Cleaver said his concern is that there was a test of the public benefit of the project and he does not agree that the arcade covered by a residential building will feel like a public space. He does not believe it, whether it is 8 feet or 14 feet wide. Having a barrier from the

parking will not ever feel to him that it is inviting under it, except possibly in a rainstorm. He also thinks the sketch shown is odd because there is no parking in front of it. The green shown at the base and perhaps half of the opening of the arcade would be covered by even a short car. Also, more than half the spaces would be taken when considering the size of some cars.

Commissioner Cleaver also said that in taking the eye or head level of people in the image, most of the arcade would be gone visually, except if one is in the arcade. A blank wall would exist with parking on the other side of it, or if sitting on the wall side, one would be looking at parked cars on the opposite side, and he did not feel this was a public amenity. He does not think there is a public amenity at the end of the east building which is covered by residential. It feels like an overhang of someone's apartment or condo, and he did not see it as being a public feeling, as well as the access through the parked cars. He said he realizes parking is premium, but one would be walking through parked cars to get to the space and then be under an overhang of the building. Having said this, he was not sure having a public space there is actually an amenity and suggested that perhaps some benches along the path that could look into the creek, where someone could stop on their way from BART to make a phone call or something else, and he did not see someone getting a pizza from Antica and then wander off to the path. He is; however, pleased that the spaces that have been left over from the building mass on the east side seem to work more with the creek.

Commissioner Marquand thanked the Council and applicant for their presentation. He echoed some of Commissioner Cleaver's comments, reiterated some of the great improvement in the design relocating the entrance. He thinks the view shown from Dewing really works, but felt it might be too ceremonial or symmetrical looking way back to the symmetry of the building mass way beyond that, but it works. He thinks that the view from Dewing is a critical view because it showed the scale of the project unlike what is shown here. There is a building mass that seems to go beyond other masses. To him, this was okay; he always bought into the high density aspect of the project, but he said he bought into to the density with the assumption that it would be balanced. Lafayette, in general, has had a balanced density and he believes high density could be in one area but then dissipate away from the center. The problem with this scheme is that even though they talked about the over-developed feel at the last meeting, he did not see the density dissipating anywhere and he thinks the 15 foot drop at the edge of the one limb of the building does not "cut it" for him for a decrease in the mass to recognize the scale of the next door buildings.

Commissioner Marquand said he tries to imagine what it will look like along the alleyway behind Antica and in front of the building, and he is reminded of the comment at the last meeting that they will be seeing dumpsters in the alley and it will seem like a canyon. The problem with that is that architecturally and in terms of urban landscape, this will be the most intense space in Lafayette; a 2-3 story wall on one side, a 5-story wall on the other, and in that intensity, dumpsters and cars will exist. It feels like something went awry here. Therefore, from his view, he felt it will be important to taper off the height of the building going away from the entrance and toward the east to the existing a bit more in terms of stories.

Councilmember Anduri questioned the dumpster issue, and Commissioner Marquand said there are some trash enclosures in the alleyway behind Antica, as well as by existing retail which is the service entrance for the buildings, and this will not change. He said the space will feel a lot more intense there with a 5-story wall on one side of it.

Commissioner Mitchell said he thinks the applicant has come a long way with the presentation, thinks it has improved quite a bit, he likes the re-orientation of the entry down at the Dewing end.

However, what it does not quite show is that if you include the lobby level and arcade level, it is six stories; if you go back 36 feet, you see a sixth floor. He said there has been talk about comparing this building to other buildings or comparing it to their previously approved office building. In that approval, there was double the amount of public open space; it had heights up to 39 feet. People were comparing it to the Town Center II which is next door and is primarily three and four stories, whereas this is four, five and six stories. In comparing this, also compared is the fact that those three and four stories are up on a hill and there is a grade elevation change. He said he was impressed by the photo montage showing that from many aspects, the building is not very well seen from Mt. Diablo Boulevard, but he does not think that is the only issue at hand. He is in favor of higher density, but if one looks at the 1.9 acres that the project sits on, excluding the creek area, it is in the mid 70's as far as units per acre. He would not necessarily have a problem with this if the units were smaller, as there may be fewer people and slightly less impacts on that area.

Commissioner Mitchell said whatever happens to the property, he would hope that the applicants are looking at 4,000 square feet of open space in the courtyard, stating the creek area is 14,000 square feet. He hoped that the space could be more integrated and made more useful. If he had to say thumbs up or thumbs down, he is still in the thumbs down category because he would agree with the public speakers and with what Councilmember Anduri said about Commissioner Hertel's point—that it continues to crowd surroundings on just about every side of the building.

Councilmember Federighi questioned the comment about six floors, and Commissioner Marquand suggested bringing up the display of the Dewing entry. The highest level shown is five stories but the entry and arcade level should be counted as a floor. He said the drawings show five stories, but the parking area, lobby and arcade are all on a floor.

Councilmember Anduri referred to a drawing showing the area to the right of the entrance that has five stories, but Mr. Heller noted it is four stories and five with the arcade. Councilmember Anduri said the point is what it looks like. In the drawing, it looks as though there are clearly four stories above an arcade. He then referred to the picture that shows the notch and questioned how wide it is. In this picture, it looks like there is an additional story in the back, and Mr. Heller said it is in the middle of the site because at that point, the parking structure is underground. Councilmember Anduri said it looks like in-between the four and five level units on either side of the entry, there is another level higher. Below the fifth level of residential, it looks like there is an arcade. Mr. Dishnica said the building shown in the background is exactly the same as the building presented in the 2005 plan. To the extent that the building is a five story residential building above a parking structure, in the front part of the site, the parking structure itself is one floor. If you come all the way out to the front, it would be six floors, which Councilmember Anduri agreed was Commissioner Mitchell's point. Mr. Heller said by the same exact terminology and method of the existing building, it is seven stories. Mr. Dishnica said if you go to the existing apartments, there is a retail parking lot, almost a full story of landscape elements, a full story of a parking garage and three stories of residential, so it reads as a five story building in that same perspective and in the back of that site, it reads two more floors above that.

Commissioner Maggio said she is sensitive to concerns she has heard tonight about the five-story building. They have worked hard on the semi-rural, small town feeling, but the site is already developed, current views include a parking lot, a freeway and a BART station. So, she said it is not as though this development is on undeveloped property and we are disrupting a pristine area. The one thing important about the project is that multi-family, green housing is being brought into a transit area close to the downtown. This gives Lafayette a very important opportunity to build sustainable housing in a transit, downtown location. People are doing it all over in small towns in a

way that it blends in well with the architecture and style of the community. She agrees with the comments this evening in reference to Commissioner Hertel's comments that work still needs to be done on movement with the façade and in stepping back, and she still feels the top is a little too heavy. However, she approves of the realigning of the entrance on Dewing providing a focal point at the end of the avenue, which has the potential of being much more attractive than the focal point they currently have.

She said a use and treatment still needs to be found for the arcade and she definitely agrees with staff and with some Commissioner comments. She feels it must be more than just art and more interactive where people can do a variety of things in that area. She did not know if chess and checkers tables might bring people in and would have to see it drawn out better. She thinks the owners and the applicants have been working diligently to improve the project, she thinks it is the right project for the space and she would like to continue with the project but work on the identified areas for improvement.

Commissioner Chastain said part of the problem is that we are either looking at the chicken or the egg. We are being asked to make a leap of faith and often times, you see which side people are landing on with great understandability. He thinks there is a basic problem that everyone should be aware of—we are all hoping for certain things but not quite sure what we are hoping for is going to be there. The entire issue of size is entirely impacted on uses in terms of density, but also its impact on the townscape. To the degree it has been shown that this building is largely tucked in is fairly convincing, but it also depends on whether or not you accept the views that have been offered. He thinks we must be very clear that we are defining any tacit approval in terms of potential performance; it may be more up to the applicant to prove what they've offered rather than we accept their proof. He also agreed that story poles would be extremely revealing as to what will be seen.

Commissioner Chastain said given this aside, he does not know what the applicant is doing on the west elevation and they do not want to get too involved until they feel there is approval for the project, so it is a problem for him to weigh in with a great, positive sense. But that said, this is the site for housing in town and more density. Any other kind of use on the site would be a waste of infrastructure, and housing on the site would activate business and other activities that he thinks everyone would agree is what the town needs right now. He thinks it is a great use, the right place at the right time, but the question is, how much of it. He thinks the question about how much is partly tied in, in terms of what the architecture can accomplish. He referred to the composite sketch of the south elevation perspective, and said aside from any small design critique, it is clear that the fifth story is a challenge and he urged the applicant to take it on not just as a window treatment but with the building scale. He felt there was no reason why this couldn't be set back, with balconies at the top floor which would make the units much more attractive and valuable. This would also help with the general scale of the building. He does not think a four-story building is at all problematic and thinks the fifth story on the west side is okay also because it helps to read that as different. So, it is more like taking on a sense of what the edge is; he thinks this is where the size has the most impact. As you move up the hill, it will be more like the apartment building, but hon the southern edge it has an impact. He said he has a thumb waiver about mass right now, but thinks it can be solved. He very much appreciates what has been done from the last time, thinks the towers coming off, the opening of the corner, and this opens up more potential for the landscape. He did not know if that has been accomplished yet, but it is there. He is very positive about the direction of the project, but the question is whether it is enough in terms of the overall size.

In terms of the public space, Commissioner Chastain asked the question of staff so everyone in the room could understand what the public benefit might be. He thinks it is tough to understand because it may not be much or take much to make it work. But, in fact, it is critical in making the building be part of the town. He is not convinced that the gallery along the edge is going to be a big deal. He thinks the applicant is missing a huge connection that in the previous site plan hinted at, and he asked to go to the drawing of the open space and circulation plan. He thinks one of the problems of the area is that it is not a great space behind; it is service on one side and those decisions were made some time ago and must be accepted. If we are trying to create some kind of public edge, in the May plan, there is a path shown between the retail pieces that moves and connects. One of the keys to the area is generating that permeability at that scale. He did not think it is a linear space as much as it could be spending the time and money to make the nodes real places; maybe nothing more than a few benches. He thinks where the creek intersects at the edge could be a much more involved landscape, but it has to be seen in the bigger picture here and not as part of the building. To work in the whole network of paths in the area will give more out of this building and this building could help that system.

Commissioner Chastain also said one of the other things very positive is that he appreciates the fact that the creek now becomes very much a part of the open space; that we are not reading it as the building edge but more as natural landscaping and it moving to BART. This direction has been a big improvement. Obviously, in the end more definition is needed but this is the right approach. Finally, the notion of it being a sustainable project is not a small thing and it is not just in building construction, but regionally, this ought to be housing.

Commissioner Humann echoed Commissioner Maggio's comments verbatim, he added that the building is huge, it probably is not in keeping with the spirit of the General Plan, but things are changing fast. He has never seen so many changes in urban and overall land planning. Everything he is reading and every seminar he has gone to points to this project as being the new way of planning. He does not think Lafayette is exempt from their contribution to this sort of development. He felt everybody must make some sacrifices and he would give it a "thumbs up". He also agrees with much of what Commissioner Chastain said; there needs to be some architectural refinements, but generally in concept, he gave the project a "thumbs up".

Commissioner Ptaszynski said he is supportive of the project for all reasons fellow Commissioners state. His emphasis would come back to how much the project offers to the public realm, and he feels the gallery feels like left over space which they are struggling to find a use for. Also, the connection with BART and where the foot path takes us is an important juncture between the city fabric and transportation and it needs to be a public event. Graphically, one of the drawings shows a set of concentric circles which has a wonderful, grand public gesture graphically on the pavement, but that's where it stops. He would like to see the level of public gesture and generosity at that scale, rather than what feels like a lot of leftover spaces, especially where the building on its east side encroaches over the plaza and effectively consumes it with no positive results. He is very much in favor of the project and would like to see the public spaces improved in quality.

Commissioner Lovitt noted the range of comments, said he likes Town Center II, thinks it is attractive and well done in some respects and in some respects it is downright beautiful. That said, he is looking at it from the perspective of what would be public space within the combined project and from the pathway. One of the attractive parts of Town Center II is that it is on the other side of the creek and there is nothing currently on the path to the west. It gives a feeling of spaciousness and openness which he thinks was something that was a very strong objective of the original BART Block Specific Plan. He somewhat understands the discussion of some of the

architectural features of what is going on, but he keeps getting stopped by the fact that in their last May meeting most of the comments made had to do with mass, bulk and height. To his eye on paper, he did not see any change with impact from that plan. He thinks that the feel of the BART Block Specific Plan was direct with clear objectives and with a building with 57- and 67-foot heights and crowding the west side of the creek, we lose everything we attempted to get in the original plan. From his standpoint, to be direct and specific, heights of 57 and 67 feet on the east side are not acceptable to him and he would never vote for it. He is not sure that going all the way down to the height of the approved office building of 35 feet is the answer or not, and this is something that could be tested. But, he cannot support something that large or that close to the creek and turning the creek pathway into much more of a canyon than we ever wanted to see.

Council Comments:

Councilmember Anduri said starting with the big issue, he thinks a big building works in this location; this is the one place that the City can locate a significant amount of housing and housing is needed downtown. The most recent indication of this was the senior study which showed the major need was for a variety of housing downtown, and interestingly, the building as adjusted fits into more of what the City is looking for in terms of alternatives in housing in the downtown and this particular structure would solve a lot of problems. In terms of being within one quarter mile of what people would need in terms of providing a liveliness to the area at night, he thinks the use of the building is good. It is difficult for him because he generally does not like large buildings, but in this particular case, he thinks the building this size in this location works. He would like to see more work done so that it does not crowd the edges, is not as concerned as Commissioner Lovitt regarding the impact along the creek, and thinks this will work out. He likes what has been done on the east side and softening it, which he feels makes the area seem more natural. He likes what was done with the adjustment of Dewing. In looking at the path between Antica and the Swad Indian Restaurant, if a focal point could be located there, it would tie together and make the project more interesting. This might; however, mean one or two parking places, but it might be worth it. He has concerns about the arcade and the public space but sees how it could work, but felt it is a matter of putting more work on it.

Councilmember Federighi echoed Councilmember Anduri's statements and agrees this is the only place in town where a building of this size and height could be located; however, her preference would be for four stories rather than five stories. She thinks it still crowds the area a little bit, but when looking at Town Center II, she thinks it is very attractive and at the time some people were concerned about how tall it would be, but it was built and there was hardly any feedback received. It was set far back enough, it was attractive, and it did not intrude that much. She said when the settlement agreement was done originally, they were looking at the 2005 plan and at that point a combination of approval of the concept was received from Design Review, Planning and Council. She said the big issue was whether or not the site line was the same on Town Center III as it was on Town Center II so that even though there was greater height, visually, it would not have any larger impact. Therefore, she is less concerned about the height overall than some are.

In terms of the mass, Councilmember Federighi said she feels there has been improvement over the May 2009 plan in that the building is set back from the creek more, square footage was cut off on the 5th floor, 2, 3-bedroom units were eliminated, 5 studio units were eliminated, so there is less mass. When comparing the different plans, the footprint is less so this crowds the footprint less than what even the 2005 plan did. She acknowledged that the project is big, but questioned how much could really be seen. One thing she still has hesitation about is the gallery and public space, and it seems like an add-on or a left-over, and this still needs work. In summary, she feels the applicant has made a number of improvements from what was seen previously.

Councilmember Anderson referred to the south elevation sketch and felt it was important to look at when talking about the public space. He cited a problem with the plan in that he sees a person trapped under the building wondering why they are there. He felt it did not quite work, which demonstrates the issue. Regarding the discussion of a water feature, he did not feel there was any reason to cross the parking lot to go there unless going to BART or, for some reason, to go to a car on the back side of the building. To him, this is the biggest problem right now. He said Commissioner Maggio commented that it should be interactive, and he agrees. He knows where the gallery came from, they talked about live/work space some time ago, not wanting to have the garage ventilation system sitting in front of you, and those things morphed into the gallery. He is still afraid no one will go over there unless there is a reason to wander. He felt it was very important to get the visibility question ironed out early and he suggested the applicant think about putting up story poles or something to give a sense of the height and visibility of the highest buildings. He thinks people will find that it is not as dramatic as they think it is from off site. He also suggested the highest roof be set formally below the BART platform. He also thinks the idea of the pathway and drawing the creek with landscaping across is great, but asked to remember that one of the main functions this has is as access to BART and asked to make it a very pleasant experience for people. He believes that the overall building has improved greatly, likes the fact that the hip roof is there and the towers are gone which makes a huge difference, and he does not have a problem with the building in terms of its massing. He is sure that with time and with design review, there will be changes made to bring the building into as much as it can be made of Lafayette character. And, he agrees this is the place for high density.

Councilmember Anderson also noted a concern from Ms. Mathisen about creep, but there are no other sites in the City like this that has that proximity to BART. He felt this can be done with the understanding that it is unique and a good opportunity for the town to have some density close to transportation and close to services. He likes the changes to the plan, would like to see something that demonstrates physically the height of the building and its visibility out on the site.

Mayor Tatzin concurred that this site is an appropriate one for what Lafayette considers to be high density housing. He thinks this is one of the best sites for it; it has convenient locations, and residents contribute more toward the economic and vitality of a community than an office building does. So, he would much rather have residents there than people who come in and work during the day and leave.

He also noted discussion about the density of the building if one looks just at a particular definition of this parcel. He reminded people that years ago, the City put together a development agreement for this parcel that anticipated they would consider the potential for residential density across all of the parcels of the BART block. This does not mean that the maximum allowable density must be approved, but it is the framework the Council should use when considering the density as opposed to cutting the parcel down by removing the parking or the creek. He discussed what the Council and Commissioners were seeing tonight, which is a combination of the pluses and minuses of seeing a work in progress and situations of what would happen if another developer came in.

Mayor Tatzin said his comments are similar to Commissioner Chastain's; one of the things needing to be done is that the applicant will have to demonstrate performance. They have seen the comments where this is not very visible; one photo from the BART platform is surprisingly underexposed so it is difficult to actually see what's going on. He said in recent weeks, he has been walking on the south side of Mt. Diablo Boulevard and he would look in the direction of where the development would be. The Council tells applicants it is really helpful to screen their

developments with existing vegetation and this project has done that. The City planted trees that are 40 and 50 feet are about 30 feet away from the southern sidewalk and they will hide much of what is built. He thinks one of the problems with this particular view is that it is almost impossible to see the project unless you happen to be walking up the BART trail and you pass Baja Fresh and emerge into the emptiness of the parking lot. But, if you are along Mt. Diablo Boulevard, the building will not be seen in this context, and he felt everyone needs to remember this. He felt maybe the City should convene an early discussion in the Diablo Foods parking lot and as a group, walk along Mt. Diablo Boulevard and take a look at different views and cited the previous walk prior to the Library construction as being helpful.

Mayor Tatzin said he feels the applicant does need to demonstrate performance and said the changes seen are noticeable over the last design. He commended the architect, said many people have commented that they like the architecture of Town Center II and believes that Heller Manis will come up with something even better. He was not sure what solutions there were for the top floor, but he likes the progress seen here and another round might help that. He also thinks the visibility should also be tested. He concurs that the arcade is an unresolved opportunity, stating that it does not take a large space to be something memorable. What has not happened yet is we have not figured out how to make the space memorable and make it a space people will want to come to.

There has also been comment this evening that the landscape designer has done a nice job of moving the creek bank up to the private garden and edge of the building so one can walk through a creek setting. Clearly, there are ways to do it and there is a requirement of spending 1% of the building's cost on art, which would make it a great space. He felt the fact that the other side of the wall to the right will be a parking garage is not relevant because it will not be a blank wall but exciting area. He agreed there is not a lot of space between the other side and the parked cars, but he cited the number of people who sit in Chow's a few feet away from cars going by on Lafayette Circle or in Yankee Pier or Pizza Antica outside where only a sidewalk separates them from traffic. So, he thinks there is an opportunity to create great space, and he is optimistic about it.

Mayor Tatzin said he would say that if the applicant is willing to continue to explore, some areas have been identified as needing further study and detailing, and this is probably the best that can be done for tonight.

ELIOT HUDSON said he agrees with the comment that the reason Town Center II works is because there is nothing next to it. He said you give away small towns a piece at a time and you cannot put buildings in this size and continue to pretend that you're continuing to maintain a small town. If the City wants to go ahead with this, he suggested putting up the story poles and letting people and the Town see what it really is, and make them wide enough and big enough so that they really get a sense of the mass of the building.

Mr. Panek thanked the Council and Commissions, thinks the meeting was productive, said comments were well-taken, noted there are opportunities, understands there are no absolute guarantees with what could be provided and said they will look forward to the comments and notes from staff and will make their judgments in working with the property owners.

Mayor Tatzin reminded everyone that starting late November or early December, Design Review and Planning Commission meetings will move to Monday nights at the new Library.

Adjourn Joint Session

ACTION: It was M/S/C (Anderson/Anduri) to adjourn the Joint Session with the Design Review and Planning Commission. Vote: 4-0-1 (Ayes: Tatzin, Anduri, Federighi, Anderson; Noes: None; Absent: Andersson).

BREAK
Mayor Tatzin called for a five-minute break and thereafter reconvened the regular meeting.

Noted Present:
Vice Mayor Andersson was noted present.

B. Michael Cass, Assistant Planner
Lafayette Chamber of Commerce (applicant), City-Wide Application: Request to Amend the 2009 Lafayette Stimulus Package Relating to Existing Small Businesses, Hours of Operation, and Parking Requirements
Recommendation: Discuss and direct staff.

Building and Planning Services Manager, Niroop Srivatsa said that in April of 2009, the Council amended the Stimulus Package and waived parking requirements for existing businesses of 1,500 square feet or less. The amendment was for three months, terminating on June 30th and at that time the business owners of Chevalier Restaurant entered into an agreement with the City. The waiver of the parking requirements at the shopping center would allow them to open during the lunch hours.

On June 22, 2009 the Council extended the waiver until today and imposed the following requirements on the property owners: The business owner and employees shall not park on site but shall park off-site during lunch; the owners shall inform restaurant patrons that there is no on-site parking available during lunch and shall update and advertise this in www.Opentable.com; and, the business owners shall maintain a log of rules by which restaurant patrons were visiting the site during lunch.

Ms. Srivatsa said the owners of Chevalier have complied with all requirements as shown in attachments to the staff report. Staff has prepared a draft resolution if the Council determines tonight that it wishes to extend this temporary arrangement any further.

Councilmember Federighi said she is curious if staff have received any complaints. Ms. Srivatsa said she received a call as did another planner from the owners of Flipper's Burgers who indicated they had a number of concerns with this arrangement, stated they were impacted by it, and they are here this evening.

Vice Mayor Andersson said at the last meeting, the Mayor asked the Manager to come up with a parking management plan, and he questioned if this had occurred. Ms. Srivatsa said she did not know if this has happened and the owners of the restaurant may be able to address this.

Public Comment:

PHILIPPE CHEVALIER said his wife could not attend tonight but the next speaker would read a statement from his wife and could answer questions for the Council.

JESSE WELLEN read into the record a letter from Gretchen Chevalier, thanking the Council for their continued attention to this matter, offered her assurance that the restaurant has diligently

followed and exceeded all requirements of the Council from the meeting of June 22, 2009. Pursuant to their continued desire to offer lunch service and utilize the parking lot at 960 Moraga Road, she submitted the following for consideration: 1) Posted signage during the lunch hour on their front gate in a position where guests cannot ignore, stating they do not offer locked parking for lunch service; 2) they arranged their telephone information line to indicate they do not offer lot parking during lunch service; 3) they changed their listing on Open Table to indicate they do not offer lot parking during lunch service; 4) they required all employees including the owner to park off site; 5) they required all service employees to notify guests verbally when placing a reservation over the phone that they do not offer lot parking during lunch service; 6) they required all service employees to ask each table of lunch guests where they parked. If they were told that guests parked in the lot, the employee was required to ask the guest to move his/her vehicle; 7) they required all service employees to log the parking location of each tabled guests; 8) they started a guest petition of support and obtained over 100 signatures and comments from lunch guests in support to continue lunch service and utilize the lot at 960 Moraga Road. Many guests were baffled when they were asked to park off site as there was generally ample parking available in the lot. They lost many customers due to this practice, but they complied with all promises made to the City Council and went beyond what was required in an effort to present a clear and fair picture of the situation at 960 Moraga Road; 9) they have obtained 5 off-site parking spaces on a Wilkinson Lane lot from a guest of the restaurant from Stanley Smith Insurance. The lot is less than 230 feet from Chevalier's front door. They met with Joe Campana, owner of Campana Music for an additional 5 spots which would complete their requirement of 10 spots. Unfortunately, Mr. Campana stated he would like to help, explained that a new boutique was going to open at 996 Moraga Road and this business was to have no designated parking spaces. His concern is that customers of the boutique would park in his lot and therefore, he is not comfortable offering 5 leased spaces. Although they have made efforts to secure off-site parking, they nonetheless maintain there is sufficient parking on the lot at 960 Moraga Road.

Mr. Wellen said they have daily photo documentation, as well as a company log demonstrating the available parking within the lot at 960 Moraga Road during lunch service. The 300 plus photos are date-stamped and were taken between the hours of 11:30 and 2:30, Tuesday through Friday. The photos will show that Flipper's Burgers continue to occupy many parking spaces during the lunch hour with employee cars, and the cars are circled on the enclosed photos. Against the Council's urging, they have made no efforts to require employees to park off site to alleviate the parking hardship they complained of at the June 22nd Council meeting. Many days, they have up to 4 cars in the lot during lunch service. Chevalier's log shows that even with Flipper's employees parked in the lot, there was an average of 9 available spots during the hours and days Chevalier's was open for lunch; some days as many as 18. Most guests who signed their petition of support could not understand why they were asked to move their cars from the lot when there was so much ample parking available. The other two businesses in the building also continue to park employees in the lot; however, these businesses have not been vocal about parking hardship. They were proud to report Open Table has rated Chevalier Restaurant as the number two overall best restaurant in the East Bay, second only to legendary Chez Panisse. They are happy to bring this honor and acknowledgement to Lafayette in only a year's time and look forward to growing their roots and hopes that the City will support them in their efforts.

Regarding sales tax revenue, prior to starting lunch service, Chevalier generated an average monthly sales tax of $4,500. Since lunch service began on May 5, 2009, their average monthly sales tax has risen more than 15% to $5,333 per month. This is without any advertising. Because of the tenuous status of lunch service, they have not invested in advertising. Once they have a more stable footing, they will invest in more appropriate advertising and promote their lunch service. It is a great success for those guests who know about them. Their prices are reasonable

and they offer Lafayette a unique lunch service at a great value. Chevalier Restaurant has committed to the communities of Lamorinda, they are active at local events, shop locally as much as possible and contribute to local charities and community projects such as the Lafayette Library, Lafayette Arts and Science Foundation, Glorietta School, Indian Valley Elementary, Meals on Wheels, to name a few. They thanked the Council, Mayor Tatzin for their continued consideration and support of Chevalier Restaurant. It is their sincere wish to remain in Lafayette and grow their business and their family here for years to come. The additional revenue from lunchtime service will contribute greatly to their ability to do this. Signed: Gretchen Chevalier.

Councilmember Anduri referred to the petition available for customers to sign. He read it and he was not sure customers understand the issue and questioned whether customers knew that when the lease was signed they were not allowed to be open during lunch. Mr. Chevalier said this was not explained to customers.

Jesse Wellen said he has been a business owner for 20 years in Lafayette with the Lafayette Car Wash. He believes the Chevalier's have done everything asked, said small businesses need help in tough economic times, and he personally passes the lot everyday and never observes a lot full of cars. Flipper's customers during the day usually arrive by skateboard or bicycle which does not seem to be a problem for parking.

BOB BROWN, owner of Flipper's, commended the Chevalier's for their efforts over the months, but said this does not address the real point that the parking lot is inadequate for two people trying to serve lunch or dinner at the same time. He said if they were a big dinner restaurant, both businesses would have the same issues and concerns of each other. Flipper's is primarily a lunchtime business and this was his reason for selecting the location. He said their busy time is coming up on them and Flipper's gives kids a place to come, they try and keep them from skating in the lot, and there are cars in the lot parked for lunchtime dining. He felt the issue is that the lot is not adequate at 24 spaces; 39 spaces would be the minimum needed under the ordinance, and had he knew this would happen he would have never opened for business at that location.

Mayor Tatzin questioned if Flipper's had lost business since Chevalier's has been opened for lunch. Mr. Brown said he does not think a lot of business has been lost because of the summer, but he will start losing it now through the spring. If they have 5-8 people parking in the lot on a daily basis, this is space not available for his customers or employees. He said people dining at Chevalier's are also parking in the lot, and the property manager can verify this.

Vice Mayor Andersson said he is baffled by Mr. Brown's analysis. He acknowledged it is the summertime, but with very few exceptions there are spaces available, and he questioned how Flipper's was losing business since there are literally always places to park. Mr. Brown said if there is a loss during the summer it is not a great loss, as their busy time starts now through spring with kids back in school.

Mayor Tatzin asked to describe the customers Flipper's gets now through spring, and Mr. Brown said they include school kids on bikes and skateboards, but also teachers and parents who drive. Mr. Brown introduced his manager of Flipper's who said dated and timed pictures will show the parking lot is full between 12-2 PM during the summertime. There have been cars parked behind cars and they've had to find the owners of those cars.

Mayor Tatzin confirmed both parties had timed pictures, and the manager said Flipper's pictures show from noon and after.

Councilmember Anduri referred to Flipper's clientele and questioned that between 11:30 and 2:30, what the difference is in the character of the clientele between summer and November. The manager said summer is not the busy time, but there are construction workers, landscapers, office and school staff who still come for lunch and they cannot find parking in the lot, and people have told him they could not find parking. They drive by and look around and indicate to him the next day that they cannot find parking. Mr. Brown said he also did not mention that in the summertime, people are on vacation and the town is quiet, but people are back in town once school starts and it gets busy.

Councilmember Anduri questioned and confirmed that students come in between 12:00 to 2:30 and after school, as well as office, teachers, and construction workers who come during lunch and cannot find parking.

Councilmember Anduri questioned if Flipper's lease was signed when Chevalier was already there. Mr. Brown said he asked for a close of April 15, 2005. Since that time, there have been at least three other restaurants in Chevalier's location, and he even questions if the location was good for that type of establishment. The manager also said that Chevalier was very aware of the fact that they could only operate before 5:30 p.m. for dinner.

Councilmember Anduri questioned if the restriction on use came in after Lafayette Coffee Roasters moved out, and Mr. Brown said restrictions were typical of the City's plan; for each amount of square footage, you have to have so many parking spaces and that is what was in existence. Ms. Srivatsa said the Planning Commission approved a parking variance in 1999 and established the conditions.

Councilmember Anduri verified that Flipper's employee's park in the lot starting at 11:00 a.m. as there is no parking on the street, which they try to do first. The manager also said that the manager at Chevalier's was also parking in the lot.

ERIC RITTENHOUSE said he enjoys good food, believes the restaurant is a treasure and said there are not too many good restaurants locally. The location is difficult for previous owners and no one knew going in what has occurred economically. He asked for a compromise to allow the necessity of Chevalier's staying in business for lunch so they can stay at the location. He felt it was great they do not have to travel out of town to find a good restaurant and asked for the Council's support.

ANDEREW ASH, Orinda, said he comes for lunch at Chevalier's and he never had problems parking on the street. He has been there and people who are told they cannot park in the lot leave and go elsewhere, which seems wrong. He felt it wasn't a question of losing business, he sees the same cars parked in the lot and if they cared about their customers they would park elsewhere. He felt it was interesting what was going on with cameras between Flipper's and Chevalier's, and felt it came down to the question that during hard economic times, people should be willing to compromise.

Councilmember Federighi said the issue before the Council is not whether it will allow Chevalier patrons at lunchtime to park in the lot, but whether or not they can continue with their plan until the end of the year because Chevalier's lease states they are not to open for lunchtime due to insufficient parking.

Vice Mayor Andersson said there are five parking spaces nearby for the applicant. He asked if they considered doing a valet service. Mr. Chevalier said he could do this and confirmed the five parking spaces were at Stanley Insurance across the street.

Councilmember Anduri questioned and confirmed that staff was not sure whether the 5 spaces were additional or allocated to the business, and Mr. Wellen said the insurance company has more than what they need and are still under their requirement.

Councilmember Federighi said she would be willing to approve the arrangement to the end of the year and hoped Chevalier would make certain people to do everything they can from dissuading people from parking in the lot. She voiced concern about the complaint now that the issue is not so much during the summer but later and she did not recall that issue being raised in the past. It would appear that Chevalier has done everything they can asked of them, people have said there is a lot of parking and it seems to be working out.

Councilmember Anduri clarified that Mr. Chevalier is asking for approval through the end of the year but not asking that we change the parking requirement. Mr. Chevalier asked to be able to be open for lunch forever, said he finds it difficult to track parking, and said he will also talk with his landlord about receiving 5 spaces from him, but otherwise may have to leave Lafayette. He confirmed he was not asking for any changes to be made regarding parking from the Council though.

Councilmember Anderson said comments on the petition remind him of the statement that no good deed goes unpunished, felt this has gotten twisted in a bad way, and he questioned where the Council was going with the issue. If extended to December, he questioned what would be done in January. He questioned what the objective was, and he thinks it continues to be difficult for him to support a situation that was basically set upfront, with criteria, and the City is now modifying that. Regardless of whether Mr. Brown uses the spaces or not, he has some right to expect they will be there for him because that is what his lease states. He takes what Councilmember Federighi said about the summer season versus winter as a bit of a waffle here, and he would be supportive of an extended trial period for a few months to see if there is truth to the fact that there is an issue that happens later in the year, or felt that a valet service that could remedy the problem, but he still wanted to talk about what happens in January.

Councilmember Federighi said this is the reason we asked for a longer term solution; they found five spaces and need some more.

Councilmember Anduri said by definition the Council is doing this as part of our effort to help businesses during a difficult time and we are adding in a business. We are not looking for a permanent solution here and he agrees with Councilmember Federighi that it is up to the applicant to find a permanent solution. He said the restaurant is very good, he would hate to see it disappear, and he would like to see the restaurant take advantage of being staying open at lunch, although he has a feeling that even when the economy turns normal, he confirmed with Mr. Chevalier that he would like to stay open for lunch, which he thinks would be good for the town. However, the City cannot deny Flipper's position; that they have a reasonable business expectation for parking also. This needs to be protected, but there are also practicalities. When discussed in April, there was a full month of school year for observation. Mr. Brown could have given evidence at that time regarding the school year, which was not done. In looking at evidence, it appears there are spaces, there is room for this to work out and he would favor extending it to the end of the stimulus period; December.

Mayor Tatzin said that if instead of Chevalier moving into the space, a retail use moved in, he confirmed with staff that they would be able to stay open for lunch, and the parking requirement would be one space per 250 square feet of net area. Mayor Tatzin said Flipper's has an underlying right for every 250 square feet of net area 24 hours a day now. If the Council was acting as the property manager, he would be doing something far more creative than the property owner has done. If the Chevalier's find 5 parking spaces close by, he thought it would be creative to offer those spaces to employees, he suggested everybody working cooperatively about how to get employees in those spaces, and hoped the business owners would agree. He would agree overall with continuing the lunchtime operations through the end of the year, thinks the Chevalier's are making an effort to making it work, and that people involved in the building have not has been as cooperative as they could be.

Councilmember Federighi said on the other hand, the parking ordinance is designed to take care of employees and customers in their requirements. So with the current lease, Flipper's is entitled to park in the lot for employees. Mayor Tatzin felt there could also be some sort of consideration for reduction in rent to address the issue, as well.

Councilmember Anduri felt it was in everybody's interest to make this work, as both restaurants are different. Vice Mayor Andersson agreed that going to the end of the year makes sense, thinks it is important to note that it matches the end of the stimulus plan, but at that point, it seems that Chevalier has to find extra spaces. He acknowledged that they found half of them, there are creative ways to use those more effectively through cooperation with businesses, but Chevalier has done whatever they can to also provide data which helps. While he did not think it was intentional, he referred to the sign regarding lunch service, and asked that it be reworded. He said he did not want people to get the idea that it was the City's fault customers had to move their cars, when in actuality, the lease signed by the Chevalier's restricted them to operating only for dinner. He believes there is a minimal amount of impact, he supported going through to the end of the year, but he felt the Chevalier's would need to come up with the spaces to continue operating during lunch.

Ms. Srivatsa said if Chevalier's wants to continue past December, they will need to apply for a parking variance or some approval from the Planning Commission immediately because it will take that long to work through, and she encouraged them not to wait but to be working with staff now to come up with a plan. She was not sure the off site 5 spaces which the applicant has stated can be used are exvess spaces not needed by that business owner and this needs to be confirmed by staff. Also, the variances run with the land, and if parking variances are granted, it will be there regardless of what restaurant comes in.

Mayor Tatzin confirmed that a variance could not be conditioned as to time, but conditions could be in place to revoke it.

Councilmember Anduri suggested identifying whether or not to extend the stimulus and he suggested putting this on the agenda in the next meeting or two.

Mayor Tatzin suggested it be agendized for the second meeting in October and Councilmember Federighi asked that the parking effects still be monitored in the meantime.

Mayor Tatzin noted that the October meeting can provide a parking update as to how full the lot is, and he suggested a separate item in terms of the stimulus package and consideration to extend it.

ACTION: It was M/S/C (Anduri/Federighi) to adopt Resolution 2009-48, and to agendize a status report for the second meeting in October and place, as a separate item, the extension of the stimulus, and for the applicants to continue collecting information. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

9. STAFF REPORTS - None

10. PUBLIC HEARING

A. Christine Sinnette, Senior Planner

Consideration of proposed amendments to the Lafayette Municipal Code consisting of (1) Ordinance 586 amending Chapter 6-23, Outdoor Storage and Repairs, (2) Ordinance 589 amending Chapter 1-3, Penalty Provisions, (3) Ordinance 590 amending Chapter 1-9, Administrative Citations, and (4) Ordinance 591 amending Chapter 8-21, Code Enforcement

Recommendation: Conduct first reading and public hearing and continue to September 28, 2009 for second reading and adoption.

Vice Mayor Andersson referred to Section 1903, and questioned if the administration citation cannot be given unless the notice of violation has been given previously. Ms. Sinnette said there must be a warning notice and then a notice of violation, which was added in as a step to get voluntary compliance. If there is non-compliance, then the specific notice of violation is given with ramifications if they do not comply, one of which is a citation.

Vice Mayor Andersson referred to Section 1906.C and asked for amendment as follows: "…the code enforcement officer, in ~~its~~ his/her discretion…"

Vice Mayor Andersson referred to Section 6.2302B, under Front Yard Area. He questioned which is the lesser in the measurement. Ms. Sinnette said staff sometimes has situations where there is a roadway easement and the property line for private property falls within the easement, versus situations where an easement may run contiguous with the property line. Staff wants to take whichever is farthest away from that line. In the case of a property line, an easement line 10 feet inside, staff wants to measure from the easement line and not the property line. Toward the rear of the lot is the direction staff is measuring across the lot.

Vice Mayor Anderson referred to Section 6-2302C; it indicates these are condition to allow the certain uses. He questioned if he cannot park on the driveway if he does not have a garage. Ms. Sinnette said staff does not want a situation where someone is taking their front yard and creating a paved area. Vice Mayor Andersson requested removing the words, "connects to covered parking" Ms. Sinnette said she did not think it is exclusive of the other items, and Mayor Tatzin said permitted activities would be covered under B, you don't have to do all of them, and each one is permitted and suggested keeping A, D and E. Ms. Sinnette agreed to return and double check the wording and meaning under each of the items.

Councilmember Federighi said she noticed in the same section, number 2; "permitted subject to conditions: living or sleeping purposes." She does not want this to be part of the residential use, but there may be occasional guests or where you have kids who might have a tent sleep over. If it is screened already, she questioned whether the City cares whether or not an occasional guest uses the vehicle. Councilmember Anderson said personally he would not care.

Mark Robbins, Code Enforcement Officer, said the purpose is to avoid people living in trailers. He thinks the language is good as an enforcement tool and it is at the discretion of the City and staff

would typically respond on a complaint basis. Councilmember Anduri agreed because there are not going to be times where enforcement is given when people occasionally have a sleep over in such a vehicle.

City Attorney Mala Subramanian said she will work with staff and make necessary edits.

The public hearing was opened. There were no public speakers, and the public hearing was closed.

ACTION: It was M/S/C (Andersson/Federighi) to introduce (1) Ordinance 586 amending Chapter 6-23, Outdoor Storage and Repairs, (2) Ordinance 589 amending Chapter 1-3, Penalty Provisions, (3) Ordinance 590 amending Chapter 1-9, Administrative Citations, and (4) Ordinance 591 amending Chapter 8-21, Code Enforcement, as amended and continue to September 28, 2009 for a second reading and adoption. Vote: 5-0-0 (Ayes: Tatzin Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

11. CONSENT CALENDAR

ACTION: It was M/S (Anduri/Andersson) to convene as RDA and approve Consent Calendar items A, B, C, D, E, F, G, H, I, J, K, L, M and N. Vote: 5-0-0 (Ayes: Tatzin Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

A. City Council Minutes

1. **August 10, 2009**
   Recommendation: Approve.
2. **September 1, 2009**
   Recommendation: Approve.

B. E-mail from Gabriel Froymovich resigning from the Crime Prevention Commission
Recommendation: Accept resignation and schedule recognition.

C. Happy Valley Road Pedestrian Path Reconstruction Project Phase II, Project Number 014-9667, Final Acceptance of Construction Contract
Recommendation: Accept the construction contract with Ameca General Engineering as complete and authorize staff to file a Notice of Completion for the Happy Valley Road Pedestrian Path – Phase II, Project Number 014-9667.

D. Resolution 2009-49 Establishing Rate of Tax Levy to Provide Payment of Interest and Principal on Series 2002 General Obligation Bonds Series and Series 2004 General Obligation Bonds During FY 2009-2010
Recommendation: Adopt Resolution 2009-49.

E. Stanley Boulevard/Springbrook Road Sidewalk Project Number 014-9672, Final Acceptance of Construction Contract
Recommendation: Accept construction contract with North Bay Construction as complete and authorize staff to file a Notice of Completion for the Stanley Boulevard/Springbrook Road Sidewalk Project Number 014-9672.

F. Letter dated August 24, 2009 from Dr. Susan Hahn resigning from the Senior Services Commission, Senior Housing Task Force and as Lafayette's representative on the Contra Costa County Advisory Council on Aging.

Recommendation: Accept with regret and schedule recognition.

G. Parks, Trails & Recreation Commission Supports 50/50 Split of Measure WW Funds with the Open Space Committee
Recommendation: Receive and file.

H. Award of Contract; PWS 09-05; Fence Extension, Public Works Services Facility, 3001 Camino Diablo
Recommendation: Award the Contract for PWS 09-05 to Pacific General Engineering.

I. Letter to the California Supreme Court regarding the ability of cities to seek judicial review of regional council of government decisions in support of the City of Irvine's Petition for Review of the opinion issued by the Fourth District Court of Appeal, Division Three, in City of Irvine v. Southern California Association of Governments Supreme Court Case No. S175329
Recommendation: Authorize Mayor to execute the letter.

J. Mount Diablo Multi-Purpose Pathway, Project No. 014-9676 Accept Project as Complete
Recommendation: Allocate $17,200 from Fund 014 Walkways Fee balance. Accept all work performed by HSR, Inc. for the Mount Diablo Multi-Purpose Pathway, Project No. 014-9676 as complete and authorize the final payment to be made including release of retention, pending approval of the City Attorney, in accordance with the City Attorney's recommendations concerning the Stop Notice claims.

K. 16 Hidden Valley Road – Request for Retaining Wall Encroachment into the City Right-of-Way
Recommendation: Approve encroachment into the City Right-of-Way along the property at 16 Hidden Valley Road and authorize the City Manager to execute an encroachment agreement with applicant.

L. 3166 Stanley Boulevard – Request for an encroachment permit to replace failing wood retaining wall within the public right-of-way with a stone retaining wall
Recommendation: Approve encroachment into the City Right-of-Way along the property at 3166 Stanley Boulevard and authorize the City Manager to execute an encroachment agreement with the applicant.

M. Update on the Multi-Jurisdictional Local Mitigation Hazard Plan
Recommendation: Receive report and continue to September 28, 2009.

Convene Redevelopment Agency

N. Update on Library Public Art Program
Recommendation: Receive and file.

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Anduri/Federighi) to adjourn the Redevelopment Agency. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

12. COUNCIL/COMMISSION REPORTS

A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.

Mayor Tatzin provided Library unveiling activities, as follows:
October 17, 2009 - City Thank You Party for donors, volunteers, City staff, construction team, architects.
October 22, 2009 - Library Foundation will host a Thank You Reception for major donors of $25,000 or more in the Community Hall, unveiling of the book statue and unveiling of the major donor walls.
November 7, 2009 - Black Tie Gala, $175 per person from 6:00-11:00 PM. Section of Mt. Diablo Boulevard to be closed for two days.
November 14, 2009 - Parade and ceremony at 10:00AM, conclude with opening the Library at 10:15 AM and Consortium events throughout the day.

Councilmember Anderson reported he will not be present for the next two meetings; Councilmember Anduri reported he will not be present at the next council meeting.

B. Councilmember Federighi
2009 Annual Conference Resolutions for Consideration at the League's Annual Business Meeting - Resolution Relating to Social Host Liability and Resolution Urging City Governments and Others to Divest from Banks That Fail to Cooperate With Foreclosure Prevention Efforts
Recommendation: Discuss and direct Lafayette's voting delegate Councilmember Federighi.

The Council briefly described both resolutions, and Vice Mayor Andersson believed that the first resolution was not entirely clear about those being held responsible and he voiced a problem with holding those responsible who are not directly involved just because their house is used for a party. Councilmember Federighi agreed, as well as fellow Councilmembers.

Mayor Tatzin suggested voting yes on the first resolution and it would be up to the City as to whether it adopts an Social Host Ordinance. Councilmembers agreed and did not voice support for the second resolution.

C. Art & Wine Booth Sign-Ups
Recommendation: Discuss.

The Council discussed hand-outs and discussed and confirmed their schedules to man the City booth at the Art & Wine Festival.

D. Emergency Preparedness Commission requests council adopt a proclamation recognizing September as National Preparedness Month.
Recommendation: Discuss and direct.

ACTION: It was M/S/C (Federighi/Anderson) to adopt a proclamation recognizing September as National Preparedness Month. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

E. Senior Services Commission recommends council adopt a proclamation recognizing September 21-27 as "Fall Prevention Awareness Week".
Recommendation: Discuss and direct.

ACTION: It was M/S/C (Anduri/Anderson) to adopt a proclamation recognizing September 21-27 as "Fall Prevention Awareness Week. Vote: 5-0-0 (Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes: None; Absent: None).

13. WRITTEN COMMUNICATIONS

A. Letter dated August 23, 2009 from Garrie E. Scott, Regent with the Mt. Diablo Chapter of the Daughters of the American Revolution, requesting a proclamation recognizing September 17 to September 23 as a week to commemorate our Constitution.
Recommendation: Discuss and direct staff.

ACTION: It was M/S/C (Federighi/Anduri) to approve a proclamation recognizing September 17 to September 23 as a week to commemorate our Constitution. Vote: 3-2-0 (Ayes: Tatzin, Anduri, Federighi; Noes: Andersson and Anderson; Absent: None).

B. E-mail received August 27, 2009 from Lori McDonald, Contra Costa County CAER Group, Inc., requesting a proclamation recognizing November 4, 2009 as Shelter in Place Education Day.
Recommendation: Discuss and direct staff.

ACTION: It was M/S/C (Anderson/Federighi) to approve a proclamation recognizing November 4, 2009 as Shelter in Place Education Day. Vote: 5-0-0 Ayes: Tatzin, Andersson, Anduri, Federighi, Anderson; Noes; None; Absent: None).

14. ADJOURNMENT

The City Council adjourned the meeting at 11:35 p.m. to the next Regular City Council meeting on September 28, 2009.

APPROVED:

_____
Don Tatzin, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk